



**STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION**

PO Box 429
TRENTON, NEW JERSEY 08625-0429

ADMINISTRATION/LEGAL
(609) 292-9830

CONCILIATION/ARBITRATION
(609) 292-9898

UNFAIR PRACTICE/REPRESENTATION
(609) 292-6780

For Courier Delivery
495 WEST STATE STREET
TRENTON, NEW JERSEY 08618

FAX: (609) 777-0089

June 27, 2002

MEMORANDUM

TO: Commissioners

FROM: Bob Anderson
General Counsel

SUBJECT: Supplemental Report on Developments in the Counsel's Office Since May 30, 2002

Commission Cases

The New Jersey Conference of Mayors is seeking to participate as an amicus curiae in Union Tp. and FMBA Local No. 46, FMBA Local No. 246 and PBA Local No. 69, I.R. No. 2002-7, 28 NJPER 86 (¶33031 2001), recon. den. P.E.R.C. No. 2002-55, 28 NJPER 198 (¶33070 2002), app. pending. A Commission designee issued an interim relief order requiring the employer to maintain a fund ensuring that employees would not lose health insurance benefits during the unfair practice litigation, but did not order the employer to rescind its arrangements with the new insurance carrier.

Other Cases

The Third Circuit Court of Appeals has upheld the obligation of the Delaware River Port Authority to negotiate with police unions representing its police officers. Delaware River Port Auth. v. FOP Penn-Jersey, Lodge 30, ___ F.3d ___, 170 LRRM 2019 (3d Cir. 2002). The Court gave preclusive effect to an Appellate Division decision involving these parties. FOP Penn-Jersey, Lodge 30 v. DRRA, 323 N.J. Super. 444 (App. Div. 1999).

Applying the Third Circuit's holding, the New Jersey Supreme Court on June 25 reaffirmed that the "complementary or parallel" legislation test is to be applied in determining whether the subsequent laws of one state party to a bi-state compact will apply to a bi-state agency. The Court then held that DRPA is not subject to the New Jersey CEPA law because that law varied substantially from the Pennsylvania whistle blower law; but DRPA was subject to a common law claim for wrongful discharge in violation of a clear mandate of public policy.

In an opinion concerning the continuing violation doctrine, the United States Supreme Court has held that Title VII precludes recovery for discrete acts of racial discrimination or retaliation occurring outside the statutory time period for filing a charge. The continuing violation doctrine, however, permits recovery for the entire scope of a hostile work environment claim, including behavior occurring outside the time period, so long as any act contributing to the hostile work environment took place within the limitations period. National Railroad Passenger Corp. v. Morgan, __ U.S. __, 88 FEP Cases 1601 (2002).

In Vickery v. Edison Tp., App. Div. Dkt. No. A-5763-00T1 (6/7/02), the Court held that an employee who had resigned could not pursue a contract claim in Superior Court for accumulated sick leave, vacation time and other benefits under the collective negotiations agreement. The Court held that the collective negotiations agreement required him to arbitrate a grievance and that he was still an "employee" under the contract for that purpose. According to the Court, the contract authorized individual employees to demand arbitration.

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